

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF THE
REVOCATION OF THE LICENSING
AUTHORITY OF:
STEVEN A. WEINER

HEARING NO. 10-HR-1286

ORDER

WHEREAS, on August 8, 2011, former Acting Illinois Director of Insurance, Jack Messmore, issued a Final Order in Hearing No. 10-HR-1286, In the Matter of the Revocation of the Licensing Authority of Steven Weiner, revoking Steven Weiner's ("Respondent") Illinois Insurance Producer's License and assessing a \$40,000 civil forfeiture and costs of the proceeding against the Respondent;

WHEREAS, on August 29, 2011, the Respondent filed in the Circuit Court of Cook County, in Case #11 CH 30558, a Complaint for Administrative Review asking the Court to overturn the former Acting Illinois Director of Insurance, Jack Messmore's, Final Order revoking the Respondent's Illinois Insurance Producer's License; and

WHEREAS, on June 11, 2012, the Honorable Judge Neil H. Cohen ("Judge Cohen") issued a Memorandum and Order regarding the Respondent's Complaint for Review reversing the August 8, 2011 Order issued by former Acting Illinois Director of Insurance Jack Messmore and remanding the matter back to the Illinois Director of Insurance, Andrew Boron ("Director Boron") for the imposition of a lesser sanction of probation or suspension and also stating, "If upon remand the Director determines that suspension is the proper sanction, the fine against [the Respondent] should be reduced to \$20,000"; and

WHEREAS, pursuant to Judge Cohen's Order, on June 25, 2012, Director Boron issued an Order on Remand remanding the proceeding to the Hearing Officer who presided over the original matter and further stating, "[a]s the Court did not rule that the Record in this matter was insufficient for administrative review, no additional testimony or evidence will be received in this matter by the Hearing Officer in the preparation of her Report on Remand"; and

WHEREAS, on August 3, 2012, Director Boron adopted the Hearing Officer's Report on Remand and issued a Final Order on Remand ordering, "...the Final Order issued on August 8, 2011 (clock starts) revoking the Respondent, Steven A. Weiner's license, is superseded by this Order and said license shall be suspended retroactively for a period of three years at which time Steven A. Weiner may

reapply as a new applicant; and the Respondent, Steven A. Weiner, shall pay...a civil penalty in the amount of \$20,000.00...and costs of this proceeding, the sum of \$752.95"; and

WHEREAS, on November 13, 2012, Judge Cohen issued an Order in response to the Respondent's Motion for Clarification and Reconsideration and ordered the matter to be remanded "for the sole purpose of a sanction hearing for [Respondent] to present mitigating evidence that the Department must consider in determining the appropriate sanction"; and

WHEREAS, on March 1, 2013 Director Boron issued a Substitution of Hearing Officer Order giving authority to Simone Arthur as Hearing Officer ("Arthur") in this matter to replace the previously appointed Hearing Officer, Helen Kim; and

WHEREAS, on September 24, 2013, based on Judge Cohen's November 13, 2012 remand, a formal administrative hearing was conducted by Hearing Officer Arthur for the sole purpose of allowing the Respondent to present mitigating evidence for the Department to consider in determining the appropriate sanction; and

WHEREAS, on 2013, Hearing Officer Arthur, based on the entire Record in this proceeding and the Respondent's presentation at the sanction hearing submitted to Director Boron her report on the matter containing her Findings of Fact, Conclusions of Law and Recommendations ("Report"); and

WHEREAS, on December 31, 2013 Director Boron issued a Final Order adopting the Report of Hearing Officer Arthur¹ wherein Hearing Officer Arthur recommended that a suspension, applied retroactively, in accordance with the August 3, 2012 Order,² is the proper sanction and that the fine assessed Steven Weiner should be reduced even further than suggested by Judge Cohen's June 11, 2012 Memorandum and Order by ordering a \$10,000 civil penalty instead of \$20,000; and

WHEREAS, on January 9, 2014, the Respondent filed a Motion to Request to Reconsider and for Rehearing with the Department; and

WHEREAS, on January 24, 2014, the Respondent filed a second Motion to Request to Reconsider and for Rehearing with the Department; and

WHEREAS, the basis for Respondent's Motions for Request to Reconsider and for Rehearing were on the grounds that the Respondent believes that the recommendations of the Hearing Officers and the Director Boron's Final Order on Remand are not supported by evidence in this matter and further that the same sanction was imposed; and

¹ On January 13, 2014, the Director Boron's Final Order was amended and reissued to clarify the 35 day pay by date and the address to where payment of the civil penalty and proceeding cost should be made.

² Pursuant to the Final Order issued on August 3, 2012, the Respondent's suspension was retroactive to the initial Order of Revocation issued on August 8, 2011. Thus, pursuant to the Director Boron's Final Order issued on January 13, 2014 Order, the Respondent's license is deemed suspended from the date of August 8, 2011 and the suspension would terminate on August 8, 2014.

WHEREAS, the Department's Hearing Regulations regarding Rehearings provides that a Respondent's Motion for Rehearing shall be filed with the Director within 10 days of the mailing of the Director's Final Order *and* for good cause shown or where the record of testimony is inadequate for purposes of judicial review (50 Ill. Adm. Code 2402.80); and

WHEREAS, the Respondent's request for rehearing was received within 10 days of the mailing of the Director's Final Order; and

WHEREAS, the Department has complied with Judge Cohen's original remand of June 11, 2012 and remand of November 13, 2012 by providing the Respondent an additional hearing for the sole purpose of providing additional evidence of rehabilitation prior to imposing a lesser sanction, per the courts recommendation of probation or suspension accompanied by a lesser fine; and

WHEREAS, the Department finds that notwithstanding the Respondent's continuance of his charitable works and recent completion of his sentence that imposing sanctions against the Respondent is reasonable and that the Final Orders issued on August 3, 2012 and December 31, 2013 ordering a suspension and fine are consistent with the Department's treatment of licenses who have felony convictions involving fraud and of those who have not completed the terms of probation; and

WHEREAS, a reviewing court may reverse sanctions imposed by an administrative agency which are overly harsh in view of mitigating circumstances, Edwards v. Illinois Racing Bd., 187 Ill. App.3d 287, 293 (1st Dist. 1989). "The test, however, is not whether [the] court would impose a lesser penalty if it were making a decision in the first instance; rather, the test is whether, in view of the circumstance, the agency acted unreasonably or arbitrarily." Id. A court cannot substitute its judgment for that of the administrative agency. Yeksigian v. city of Chicago, 231 Ill. App. 3d 307, 312 (1st Dist. 1992).

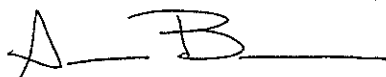
WHEREAS, the Director of Insurance being otherwise fully advised in the premises;

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent's Motion for Rehearing is denied. The Respondent's Motion does not, as is required by 50 Ill. Adm. Code 2404.280, show adequate good cause for a rehearing nor is the record of testimony made at the Hearing inadequate for purposes of judicial review.

March 24, 2014

Date: _____

DEPARTMENT OF INSURANCE



Andrew Boron
Director

CERTIFICATE OF SERVICE

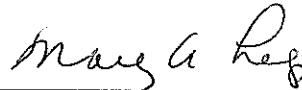
I HEREBY CERTIFY that on March 25, 2014, I caused a true and correct copy of the foregoing instrument to be served upon the Attorneys of Record or Parties to the above captioned matter, by the designated means:

Steven A. Weiner
3840 Timbers Edge
Glenview, IL 60025

☒ first class mail
☒ certified mail # 0877
☐ hand delivery
☐ electronic mail
☐ via facsimile

Mark A. Flessner
Holland & Knight
131 S. Dearborn St., 30th Fl.
Chicago, IL 60603

☒ first class mail
☒ certified mail # 0884
☐ hand delivery
☐ electronic mail
☐ via facsimile



Mary Ann Lelys
Administrative Assistant